

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JAY OWEN,

Defendant-Appellant.

UNPUBLISHED

July 29, 2003

No. 239279

Ottawa Circuit Court

LC No. 01-024725-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction on two counts of felonious assault, MCL 750.82, and one count of felonious driving, MCL 752.191. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that he was denied the effective assistance of counsel. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant claims that counsel was ineffective in failing to introduce a 1990 larceny conviction to impeach a prosecution witness. However, MRE 609(c) bars the introduction of evidence of such a conviction if more than ten years have elapsed since the date of conviction or release from confinement. The conviction would not have been admissible.

Defendant argues that counsel was ineffective in presenting a damaging witness. In closing argument, counsel identified a strategic purpose for presenting the witness. The selection of witnesses is a matter of trial strategy, which this Court will not second-guess on appeal. *People v Avant*, 235 Mich App 499; 597 NW2d 843 (1999). There is no showing that counsel's actions changed the outcome of the case.

Defendant asserts that prior bad acts evidence was improperly admitted. This issue was not preserved by an objection. *People v Yarger*, 193 Mich App 532, 539; 485 NW2d 119 (1992). No evidence of defendant's prior conviction was admitted, and the evidence presented

was probative of identification, motive, and intent. An objection would not have been successful, and would not have affected the outcome of the case.

Defendant also argues that his convictions violate double jeopardy protections. The guarantee against double jeopardy protects against multiple prosecutions and multiple punishments for the same offense. *People v Denio*, 454 Mich 691, 706; 564 NW2d 13 (1997). The issue presented in this type of challenge is whether the Legislature intended multiple punishments at a single trial for persons who commit two offenses in the same criminal transaction. *Id.* The purpose of the felonious assault section is to punish persons who place another in a position of fear by use of dangerous weapons. *People v Williams*, 6 Mich App 412; 149 NW2d 245 (1967). The felonious driving provision focuses on the culpable nature of the defendant's actions and on the resultant harm, and its primary purpose is the protection of individuals from crippling injuries. *People v Mathews*, 197 Mich App 143, 145; 494 NW2d 764 (1992). Multiple punishments for these two crimes do not violate the double jeopardy clause.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens